



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on November 28, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-16563

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Antonov Design Bureau**

Date Filed: November 21, 2003

Relief requested:

- (1) Exemption from the foreign air carrier permit and exemption conditions of Order 98-2-5; and
- (2) Statement of authorization under 14 CFR Part 212 of the Department's rules to the extent necessary to permit Antonov Design Bureau (Antonov) to operate one one-way fifth-freedom cargo charter flight with AN-225 aircraft, transporting 150 metric tons of cargo from New York (JFK) to Khartoum, Sudan, on behalf of Samaritan's Purse, a charitable organization based in North Carolina. The flight is scheduled to depart New York on or about December 4, 2003. The purpose of the flight is to transport 80,000 shoe box gifts packed by children in the United States for needy children in Sudan.

In support of its requests, Antonov states that Order 98-2-5, issued by the Department pursuant to Executive Order 13067, (published at 62 Fed. Reg. 59987-59990, November 5, 1997) strictly prohibits virtually all transactions involving transportation of cargo to/from Sudan, and does not address exceptions in the Executive Order. In that regard, Antonov notes that Section 2(b) of the Executive Order prohibits the exportation of goods from the United States to Sudan "except for donations of articles intended to relieve human suffering, such as food, clothing, and medicine." Antonov states that it is Antonov's understanding that the shipment qualifies as "donations or articles intended to relieve human suffering" and that its facilitation of the shipment at issue here is both incidental to the transaction and covered by the exception provided for in the Executive Order. Antonov further states that export of the goods is consistent with the Sudanese Sanctions Regulations implemented by the Department of Treasury, Office of Foreign Assets Control (OFAC).¹ Antonov further states that it holds requisite Department authority to conduct the proposed services.

Applicant representative: Robert E. Cohn/Sheryl R. Israel (202) 663-8312

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: Atlas Air, Inc. (Atlas) and Gemini Air Cargo, Inc. (Gemini) filed comments in response to Antonov's request. Atlas states that it does not oppose the instant request but notes Antonov's "historically heavy reliance" on fifth-freedom charter operations. Atlas further states that the shipment (shoe box gifts) is not oversized, and notes that the Department typically grants such requests only upon a compelling public interest showing which Antonov has not made. Atlas states its intention to closely monitor future Antonov fifth-freedom cargo charter requests and oppose those flights that are not demonstrably for oversized cargo. Gemini states that it supports the comments filed by Atlas and adds that it will also monitor future Antonov fifth-freedom requests and oppose those that are not for the transportation of oversized cargo.

DISPOSITION

Action: Approved

Action date: November 28, 2003

(We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served, and having considered the two responsive pleadings filed.)

Effective dates of authority granted: November 28, 2003-December 7, 2003

¹ Antonov provided a copy of OFAC registration No. SH-98149, issued to Samaritan's Purse, authorizing the charterer "to conduct its humanitarian activities in Sudan, including the transfer of funds and exportation of goods and services to Sudan, in connection with humanitarian operations."

Basis for approval: Based on the record before us, we found that the authority requested by Antonov and the grant of Antonov's request for an exemption was in the public interest. In addition, we also found that grant of Antonov's request for a statement of authorization under 14 CFR Part 212 was in the public interest. We also found that reciprocity with Ukraine warranted approval of its request to operate the subject flight.

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions and to the condition that Antonov comply with an FAA-approved flight routing for the authorized flight.

We may amend, modify or revoke this authority at any time and without hearing.

Action taken by: Michael W. Reynolds
Acting Assistant Secretary of Aviation
and International Affairs

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http://dms.dot.gov/reports/reports_aviation.asp

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.